SA2005RF0097

DOREL HARMS, RN

September 2, 2005



Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Knight:

Pursuant to Article II, Section 10(d) of the California Constitution, I submit the attached proposed statewide ballot measure to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to section 9608 of the California Elections Code. I have also included a check to cover the $200 filing fee.

Thank you for your time and attention to this important matter. If you require additional information or have any questions, please feel free to contact me at (916) 552-7574.

Very truly yours,

Dorel Harms, RN

Enclosure

SA2005RF0097

INITIATIVE MEASURE TO BE SUBMITTED TO VOTERS

THE EMERGENCY SERVICES AND TOBACCO TAX ACT OF 2006

SECTION 1. Statement of Findings

(a) Cigarette smoking and other uses of tobacco are leading causes of many serious health problems, including cancer, heart disease and respiratory diseases. The treatment of tobacco-related diseases imposes an added burden upon California's already overstressed health care system. Prior efforts to curb the use of tobacco have not sufficiently eased the health care burden on the taxpayers of California.

(b) Currently, the state imposes a tax on cigarettes and tobacco products. Funds from that tax are used in part by the state to fund programs to offset the adverse health consequences of tobacco use.

(c) The United States Department of Health and Human Services estimates that ninety percent (90%) of cigarette smokers begin to use tobacco before age 20. Thus, programs focused on educating and preventing children and young adults from smoking will reduce the long-term adverse health consequences of smoking on our health care system. Existing programs in California are under-funded, and the number of children and young adults who smoke cigarettes, particularly young adults between the ages of 18 and 25, is much too high.

(d) The tax on tobacco products in California has not been raised since 1998. As a consequence, the total tax levied on tobacco products is much less than in many other states. Yet, the health consequences to our citizens and the corresponding burden on our state's over stressed hospital services from tobacco use continues.

(e) Increasing demand for health services, caused in part by tobacco-related illness, and inadequate financial and human resources are combining to rapidly erode the ability of hospitals to provide emergency medical services to their patients.

(f) Sixty-eight hospitals have closed between 1996 and 2004 -- nine in 2004 alone. In addition, numerous hospitals during the same timeframe have closed or reduced their emergency departments. Losses experienced by hospitals for uncompensated emergency services are cited as the one of the greatest factors in hospital closures and emergency service reductions. Nonetheless, all hospitals with emergency rooms have a legal obligation to provide emergency services to anyone who comes through their doors.

(g) The deterioration of the state's hospital emergency services network has left many communities unable to adequately cope with the normal flow of emergency services and highly vulnerable in the event of a terrorist attack or natural disaster. Gravely ill patients must commonly wait for long periods of time, or are diverted to more distant hospital emergency

rooms. Further, adequate emergency and on-call physician specialty services are increasingly difficult or impossible for hospitals to provide or arrange.

(h) The establishment and preservation of hospital emergency services adequate to meet the needs of Californians are vital to the public's interest, similar to fire and police protection. These vital public services include both immediate medical care rendered in hospital emergency rooms, and follow-up specialized care provided by on-call physicians.

(i) California faces a severe shortage of qualified nurses. The shortage of nurses has been cited as a major cause of the closure of hospitals and emergency services. Unless the nurse shortage is addressed, emergency hospital services will be further reduced.

(j) State programs to prevent illegal smuggling and black market sales of cigarettes and tobacco products and the evasion of payment of tobacco taxes have gone largely unfunded. This has resulted in a loss of significant tax revenue to the state which would have been used to fund tobacco-related programs, including healthcare, tobacco education and research.

SECTION 2. Statement of Purpose

(a) The people of California hereby enact the Emergency Services and Tobacco Tax Act of 2006 to preserve and improve the delivery of emergency services by hospitals, doctors and nurses by:

(1) increasing the tax on cigarettes by $1.50 per pack to provide supplemental funding to further this purpose;

(2) providing funds for hospitals to offset their uncompensated costs of providing emergency services;

(3) improving coverage of emergency and on-call specialty medical services for hospital patients arriving in the emergency department;

(4) improving the quality and volume of nursing education to address a nurse shortage that threatens the ability of hospitals to provide emergency medical services;

(5) reducing the burden on the emergency medical system, caused, in part, by tobacco-related illnesses, by reducing the consumption of cigarettes, particularly among children, teens and young adults, through education programs and by increasing the tax on cigarettes; and

(6) protecting the integrity of the tobacco tax by providing funds for the enforcement of laws preventing smuggling and black market sales of tobacco products and the evasion of tobacco taxes.

SECTION 3. Tobacco Tax

Article 4 of Chapter 2 of Part 13 of Division 2 (commencing with Section 30132) of the Revenue and Taxation Code is added to read:

Article 4. The Emergency Services and Tobacco Tax of 2006 Trust Fund

§ 30132. The Emergency Services and Tobacco Tax of 2006 Trust Fund is hereby created in the State Treasury. The fund shall consist of all revenues deposited therein pursuant to this Article and used exclusively for the purpose provided in Section 30132.2.

§ 30132.1(a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) and any other taxes in this Chapter, there shall be imposed an additional tax upon every distributor of cigarettes at the rate of seventy-five mills ($0.075) for each cigarette distributed.

(b) For purposes of this Article, the term "cigarette" has the same meaning as in Section 30003, as it read on January 1, 2005.

(c) The tax imposed by this Section shall be imposed on every cigarette in the possession or under the control of every dealer and distributor on and after 12:01 a.m. on July 1, 2006, pursuant to rules and regulations promulgated by the State Board of Equalization. In the event this Act is not presented to the voters and approved prior to July 1, 2006, then the tax shall be imposed commencing January 1, 2007.

§ 30132.2 Moneys deposited in the Emergency Services and Tobacco Tax of 2006 Trust Fund ("Tobacco Trust Fund") shall be annually allocated and credited by the Treasurer to the following accounts within the Tobacco Trust Fund, or to such other accounts or funds as otherwise indicated, as follows:

(a) to the administrative account, which is hereby created, an amount to reimburse the reasonable, actual direct costs to the State Board of Equalization to implement this Article, not to exceed over the course of any annual fiscal period one quarter of one percent (0.25%) of the total amount deposited in the Tobacco Trust Fund for the same period;

(b) to the Cigarette and Tobacco Products Surtax Fund created by Section 30122 (Proposition 99), three percent (3%) of the revenue generated from the tax imposed by this Article to offset reductions in revenue to that Fund resulting from a decrease in the consumption of cigarettes directly attributable to the tax imposed by this Article;

(c) to the Breast Cancer Fund created by Section 30461.6, one percent (1%) of the revenue generated from the tax imposed by this Article to offset reductions in revenue to that Fund resulting from a decrease in the consumption of cigarettes directly attributable to the tax imposed by this Article;

(d) to the California Children and Families Trust Fund created by Section 30131 (Proposition 10), five percent (5%) of the revenue generated from the tax imposed by this Article to offset reductions in revenue to that Fund resulting from a decrease in the consumption of cigarettes directly attributable to the tax imposed by this Article;

(e) to the Black Market Cigarette and Tobacco Crime Prevention Account created by Section 30474.5, three percent (3%) of the revenue generated from the tax imposed by this Article for programs to prevent tobacco tax evasion, smuggling and black marketing of tobacco products;

(f)(1) to the Emergency Care Physician Services Account , which is hereby created, four and one half percent (4.5%) of the revenue generated from the tax imposed by this Article, to be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code;

(2) to the Rural Emergency Care Physician Services Account, which is hereby created, one half of one percent (0.5%) of the revenue generated from the tax imposed by this Article, to be administered and allocated for distribution through the Rural Health Services Program (RHSP), Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(3) Funds allocated pursuant to this subdivision shall be used only for reimbursement of physicians for losses incurred in providing uncompensated emergency services in general acute care hospitals providing basic, comprehensive or standby emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred annually by the Department to the Physician Services Accounts in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code, and shall be paid only to physicians who directly provide emergency medical services to patients, based on claims submitted or a subsequent reconciliation of claims. Payments shall be made as provided in Sections 16951 to 16599, inclusive, of the Welfare and Institutions Code, and payments shall be made on an equitable basis, without preference to any particular physician or group of physicians. Funds allocated by this Section to counties that have not established an Emergency Medical Services Fund pursuant to Section 16951 shall be deposited into the Department of Health Services EMSA Contract Back Program, to be used only for the reimbursement of uncompensated emergency services, as defined in Section 16953, and payments made, based on claims submitted, in accordance with the procedures and policies established in Sections 16952 through 16959 of the Welfare and Institutions Code;

(g) to the Health Education Account created by Section 30122(b)(1), nine percent (9%) of the revenue generated from the tax imposed by this Article for new programs designed specifically for the prevention and reduction of tobacco use among children, teenagers and young adults, age twenty to twenty-five;

(h) to the Nursing Workforce Education Account, which is hereby created, nine percent (9%) of the revenue generated from the tax imposed by this Article for programs to expand

nursing education opportunities and capabilities to meet nursing workforce demands pursuant to Section 128225.5 of the Health and Safety Code;

(i) to the Emergency and Trauma Hospital Services Account, which is hereby created, the remainder of all moneys in the fund, not to exceed sixty-five percent (65%) of the revenue generated from the tax imposed by this Article to further the provision of hospital and medical services to emergency patients in California pursuant to Chapter 4.5 (commencing with Section 1797.300) of Division 2.5 of the Health and Safety Code.

(j) Moneys deposited into the Tobacco Trust Fund and annually allocated and credited to each of the accounts within such fund, including interest and investment income earned thereon, are continuously appropriated without regard to fiscal years for the purposes stated for each such account.

SECTION 4. Anti smuggling and Tobacco Crime Prevention

Section 30474.5 of Chapter 10 of Part 13 of Division 2 of the Revenue and Taxation Code is amended to read:

§ 30474.5(a) This section shall be known as and may be cited as the Black Market Cigarette and Tobacco Crime ~~Street Corruption~~ Prevention Act. There is hereby created in the State Treasury the Black Market Cigarette and Tobacco Crime Prevention Account. Funds in the Account credited pursuant to Revenue and Taxation Code Section 30132.2(e) and this section shall be continuously appropriated to and administered by the Criminal Justice Programs Division of the Office of Emergency Services ~~Office of Criminal Justice Planning~~ solely for the uses provided herein.

(b) The people of the State of California ~~Legislature~~ find that the sale of black market, untaxed cigarettes has resulted in the loss of hundreds of millions of dollars in revenue to the state, robbing state health care and programs designed to help children.

(c) It is the intent of the people ~~Legislature, by enacting the act adding this section,~~ to provide resources to prosecutors and local law enforcement personnel, and to enable local jurisdictions to develop a multi-agency taskforce for the purpose of significantly reducing the sales of black market cigarettes and creating a deterrent to those sales through the focused investigation and prosecution of sales of black market cigarettes, and other associated offenses and related crimes.

(d) In addition to the fine or sentence, or both, imposed by Section 30474, each person convicted under Section 30474 shall pay one hundred dollars ($100) for each carton of 200 cigarettes, or portion thereof, who knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of Section 30474, as determined by the court. The court shall direct that the penalty of one hundred dollars ($100) assessed under this section shall be transmitted to the Controller for deposit in the Black Market Cigarette and Tobacco Crime Prevention Account. ~~Unlawful Sales Reduction Fund, which is hereby created.~~

(e) Moneys in the account ~~Upon appropriation by the Legislature, the moneys in the fund~~ shall be allocated to the Criminal Justice Programs Division of the Office of Emergency Services ~~Office of Criminal Justice Planning~~ for the funding of a competitive grant program ~~to be established by the Legislature~~ to award grants to local jurisdictions for the purpose of establishing a multi-agency taskforce, the composition of which shall include prosecutors and local law enforcement personnel and may include state law enforcement personnel, for the purpose of significantly reducing the sales of black market cigarettes, and creating a deterrent to those sales through the focused investigation and prosecution of sales of black market cigarettes and other associated offenses and related crimes. No more than 5 percent (5%) of the amount transmitted from the penalty of one hundred dollars ($100) assessed under this section may be retained to fund the costs of administering the competitive grant program.

(f)~~(e)~~ The Criminal Justice Programs Division of the Office of Emergency Services ~~Office of Criminal Justice Planning~~ shall consult with the State Board of Equalization in the administration of the competitive grant program.

~~(f)(1) The one hundred dollar ($100) penalty for each carton of 200 cigarettes knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold, or offered for sale in violation of Section 30474, as authorized under subdivision (d), shall only be imposed for the period beginning on January 1, 2003, and ending on January 1, 2006.~~

~~(2) This section shall remain in effect until December 1, 2006, or until all the moneys remaining in the Unlawful Sales Reduction Fund on January 1, 2006, have been appropriated by the Legislature for allocation to the Office of Criminal Justice Planning for funding the competitive grant program established under this section, whichever occurs later.~~

Section 30480 of Chapter 10 of Part 13 of Division 2 of the Revenue and Taxation Code is amended to read:

§ 30480 Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the payment of tax due under this part, or the determination of an amount due required by law to be made, is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12 consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than ~~five thousand dollars ($5,000)~~ twenty five thousand dollars ($25,000) and not more than ~~twenty thousand dollars ($20,000)~~ three times the amount of tax liability, or imprisonment for 16 months, ~~two years,~~ three years, or five years, or by both the fine and imprisonment in the discretion of the court.

SECTION 5. Nursing Workforce Education Investment

Section 128215 of Article 1 of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code is amended to read:

§ 128215. There is hereby created a California Healthcare Workforce Policy Commission. The commission shall be composed of 17 ~~15~~ members who shall serve at the pleasure of their appointing authorities:

(a) Eleven ~~Nine~~ members appointed by the Governor, as follows:

(1) One representative of the University of California medical schools, from a nominee or nominees submitted by the University of California.

(2) One representative of the private medical or osteopathic schools accredited in California from individuals nominated by each of these schools.

(3) One representative of practicing family physicians.

(4) One representative who is a practicing osteopathic physician or surgeon and who is board certified in either general or family practice.

(5) One representative of undergraduate medical students in a family practice program or residence in family practice training.

(6) One representative of trainees in a primary care physician's assistant program or a practicing physician's assistant.

(7) One representative of trainees in a primary care nurse practitioner program or a practicing nurse practitioner.

(8) One representative of the Office of Statewide Health Planning and Development, from nominees submitted by the office director.

(9) Two ~~One~~ representatives who are ~~is a~~ practicing registered nurses, including one chief nurse executive officer from an acute care hospital, and one staff registered nurse from an acute care hospital.

(10) One representative of employers of registered nurses, who shall be a chief executive officer of a general acute care hospital.

(b) Two consumer representatives of the public who are not elected or appointed public officials, one appointed by the Speaker of the Assembly and one appointed by the Chairperson of the Senate Committee on Rules.

(c) Two representatives of registered nursing education, ~~practicing registered nurses,~~, including one nurse educator from a college/university nursing program, and one full-time nursing student from a college/university nursing program ~~one~~ appointed by the Speaker of the Assembly ~~and one appointed by the Chairperson of the Senate Committee on Rules~~.

(d) Two representatives, including a nurse recruiter from a hospital system, and a registered nurse representing a patient or consumer advocacy organization ~~of students in a registered nurse training program, one appointed by the Speaker of the Assembly and one~~ appointed by the Chairperson of the Senate Committee on Rules.

(e) The Chief of the Health Professions Development Program in the Office of Statewide Health Planning and Development, or his or her ~~the chief's~~ designee, shall serve as executive secretary for the commission.

Section 128224.5 of the Health and Safety Code is added to read:

§ 128224.5(a) The seven commission representatives from the nursing profession, the representative of employers of registered nurses, and the Chief of the Health Professions Development Program shall develop a master plan for nursing education, which shall initially be based upon the "Master Plan For the California Nursing Workforce" prepared by the California Institute for Nursing and Healthcare dated March 31, 2005. The commission may contract for assistance in developing the master plan with one or more private consultants; shall receive staff support from the office; and may receive assistance from other state agencies through an interagency agreement. The master plan shall include a state nursing contract program with accredited schools and programs that educate registered nurses, including associate degree programs ("ADN"), bachelor of science degree programs ("BSN"), master's degree programs ("MSN"), and higher graduate nursing education programs ("DNSc/PhD"), to develop, expand and improve programs to educate registered nurses. Priority shall be given to programs that provide quality education and increase the number of nursing student graduates and educators most likely to meet the state's most pressing needs for registered nurses. This plan shall take into consideration current and future state demographics and the corresponding need for types of services from registered nurses to meet the requirements of continually advancing technology and the aging population. When evaluating the number and types of registered nurses and level of nursing education needed to meet future demands, consideration shall be given to staff nurses, managers, administrators and educators. The master plan shall include recommendations for the allocation of funds in the Nursing Workforce Education Account to meet the strategic goals of the plan.

(b) In addition to the other duties of the commission, it shall review and approve the master plan developed by the seven nurse representatives. The commission shall order the master plan to be re-evaluated and amended from time to time pursuant to this section.

(c) The commission shall obtain an independent evaluation of the state nursing contract program which shall be submitted to the Legislature and Governor by October 1, 2011, and every five years thereafter. The evaluation shall identify to what extent new nursing slots were created, the number of new graduates from these slots, the number of graduates licensed under this program, and the number of licensees joining the active California workforce. The evaluation shall also address the number of graduates receiving advanced degrees funded by this program; the success of the program in effectively meeting the need for registered nurses given the increasingly complex, technological and advanced scientific delivery of health care; and other needs identified in the master plan. Sustainability of programs shall also be evaluated. The cost of this evaluation shall be paid from the Nursing Workforce Education Account.

Section 128225.5 of the Health and Safety Code is added to read:

§ 128225.5 Funds in the Nursing Workforce Education Account credited pursuant to Revenue and Taxation Code Section 30132.2(h) shall be continuously appropriated without regard to fiscal years to the Office of Statewide Health Planning and Development. The director shall utilize the funds appropriated to implement the statewide master plan adopted by the

commission pursuant to Section 128224.5; and to reimburse the office and the commission for all reasonable, actual, direct administrative costs incurred to implement this section, not to exceed one percent (1%) of the amount deposited into the account for the same period. All interest and other investment income earned in the account shall remain in the account and is continuously appropriated to the Office of Statewide Health Planning and Development as provided by this section. The director shall utilize all funds appropriated to the extent reasonably possible. To the extent any funds appropriated are not utilized, or after being committed are returned or remain unspent for any reason, such funds shall remain in or shall be re-deposited into the Nursing Workforce Education Account for appropriation and use pursuant to this section. The Director of Finance shall cooperate with and assist the office and the commission to facilitate the implementation of this Article.

SECTION 6. Emergency and Trauma Hospital Services

Chapter 4.5 (commencing with Section 1797.300) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 4.5 HOSPITAL EMERGENCY SERVICES

Article 1. The Emergency and Trauma Hospital Services Account

§ 1797.300 To support the public's need for hospital emergency services, the department shall administer funds made available to hospitals for such services as provided by this Chapter.

§ 1797.301(a) The department shall calculate each eligible hospital's funding percentage to be used for the next calendar year based upon the information submitted by such hospital pursuant to Section 1797.302 and notify each eligible hospital of its proposed funding percentage no later than June 15 of each calendar year.

(b) The department shall receive and review the accuracy and completeness of information submitted by eligible hospitals pursuant to Section 1797.302. The department shall develop a standard form to be utilized for reporting such information by eligible hospitals, but shall accept information from eligible hospitals that is not reported on such standard form. The department shall allow hospitals to report such information electronically no later than April, 2008.

(c) The department shall notify each hospital submitting the information specified under subdivision (a) of Section 1797.302 in writing through a communication delivered by no later than April 30 each year confirming the information it has from such hospital and of any apparent discrepancies in the accuracy, completeness, or legibility of information submitted by such hospital pursuant to Section 1797.302. Unless such written notice is timely delivered to an eligible hospital, the information it reports pursuant to Section 1797.302 shall be deemed to be complete and accurate, but it shall be subject to audit under subdivision (f).

(d) A hospital that receives notice from the department that the information it reported was not accurate, complete, or legible shall have 30 days from the date the notice is received to

provide the department with correct, complete and legible information. Such corrected or supplemental information shall be used by the department to make the calculation required by subdivision (a), but shall be subject to audit under subdivision (f). A hospital that does not provide sufficient legible information to establish that it qualifies as an eligible hospital or to allow the department to make the calculation required under subdivision (a) shall be deemed to not be an eligible hospital.

(e) The department may enter into an agreement with the Office of Statewide Health Planning and Development or another state agency or private party to assist it in analyzing information reported by eligible hospitals and making the hospital funding allocation computations as provided under this Chapter.

(f) The department shall audit the use by eligible hospitals of any funds received pursuant to Section 1797.304, and the accuracy of data on emergency department patient encounters and other information any hospital reports under this Chapter, as follows: the department shall randomly select twenty percent (20%) of all eligible hospitals each year for audit of the information they submit. Additionally, the department may conduct a field audit of the use of funds or information submitted by any hospital. If the department determines upon audit that any funds received were improperly used, or that inaccurate data reported by the eligible hospital resulted in an allocation of excess funds to the eligible hospital, it shall recover any excess amounts allocated to, or any funds improperly used by, an eligible hospital. The department may impose a fine of not more than twenty-five percent (25%) of any funds received by the eligible hospital that were improperly used, or the department may impose a fine of not more than two times any amounts improperly used or received by an eligible hospital if it finds such amounts were the result of gross negligence or intentional misconduct in reporting data or improperly using allocated funds under this Chapter on the part of the hospital. Any fines imposed by the department shall be stayed if appealed by the hospital pursuant to subdivision (g) until judgment by a court of final jurisdiction. In no event shall a hospital be subject to multiple penalties for both improperly using and receiving the same funds.

(g)(1) A licensed hospital owner shall have the right to appeal the imposition of any fine by the department, or a determination by the department that its hospital is not an eligible hospital, for any reason, or an alleged computational or typographical error by the department resulting in an incorrect allocation of funds to its hospital under Section 1797.304. A hospital shall not be entitled to be reclassified as an eligible hospital or to have an increase in funds received under this Chapter based upon subsequent corrections to its own final reporting of incorrect data used to determine funding allocations under this Article.

(2) Any such appeal shall be heard before an administrative law judge employed by the Office of Administrative Hearings. The hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The decision of the administrative law judge shall be in writing; shall include findings of fact and conclusions of law; shall be final; and shall be subject to appeal as provided by Section 11523 of the Government Code. The decision of the administrative law judge shall be made within 60 days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(3) The appeal rights of hospitals under this subdivision (g) shall not be interpreted to preclude any other legal or equitable relief that may be available.

(h) Any fines collected by the department shall be deposited in the Emergency and Trauma Hospital Services Account within the Tobacco Trust Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.304. Such funds shall not be used for administrative costs, and shall be supplemental to, and shall not supplant, any other funds available to be allocated from such account to eligible hospitals.

(i) In the event it is determined, upon a final adjudicatory decision that is no longer subject to appeal, that a hospital has been incorrectly determined to not qualify as an eligible hospital, or was allocated an amount less than the amount to which it is entitled under Section 1797.304, the department shall, from the next allocation of funds to hospitals under Section 1797.304, allocate to such hospital the additional amount to which it is entitled, and reduce the allocation to all other eligible hospitals pro rata.

§ 1797.302(a) Each hospital seeking designation as an eligible hospital shall submit the following information to the department by no later than February 15 of each year, commencing the first February 15 following the operative date of this Act:

(1) The number of emergency department encounters that took place in the hospital's emergency department during the preceding calendar year;

(2) The total amount of charity care costs of the hospital for the preceding calendar year;

(3) The total amount of bad-debt costs of the hospital for the preceding calendar year;

(4) The total amount of county indigent program effort costs of the hospital for the preceding calendar year;

(5) If requested, a photocopy of the hospital's operating license from the State Department of Health Services or equivalent documentation establishing that it operates a licensed emergency department;

(6) A declaration of commitment to provide emergency services and training as required by subdivision (a) of Section 1797.303.

(b) Both pediatric and adult patients shall be included in the data submitted. The accuracy of the data shall be attested to in writing by an authorized senior hospital official. No other data or information shall be required by the department to be reported by eligible hospitals.

(c) Each hospital that receives a preponderance of its revenue from a single associated comprehensive group practice prepayment health care service plan shall report information required by this section for all patients, and not just for patients who are not enrolled in an associated health care service plan.

§ 1797.303(a) An eligible hospital shall, throughout each calendar quarter in which it receives an allocation pursuant to Section 1797.304:

(1) Maintain an operational emergency department available within its capabilities and licensure to provide emergency care and treatment, as required by law, to any pediatric or adult member of the public who has an emergency medical condition.

(2) Do all of the following:

(A) Participate in a minimum of two disaster training exercises annually;

(B) Provide training and information as appropriate to the hospital's medical staff, nurses, technicians and administrative personnel regarding the identification, management, and reporting of emergency medical conditions and communicable diseases, as well as triage procedures in cases of mass casualties;

(C) Collaborate with state and local emergency medical services agencies and public health authorities in establishing communications procedures in preparation for and during a disaster situation; and

(D) Establish or maintain an emergency and disaster management plan. This plan shall include response preparations to care for victims of terrorist attacks and other disasters. The plan shall be made available by the hospital for public inspection.

(b) It is the policy of the state to encourage hospitals to work cooperatively to develop regional plans for assuring maximum availability of emergency services to all patients, and to share equitably in the provision of emergency services to uninsured and low income under-insured patients in achieving such maximum availability of emergency services.

(1) Each hospital receiving funds under this Chapter that operates a basic or comprehensive licensed emergency department may participate in the development of a regional or other local plan for equitably sharing of responsibility for providing emergency services to uninsured and low-income underinsured patients arriving at the hospital via ambulance. Any such plan may be developed under the auspices of a hospital association or through other cooperative arrangements, and shall be submitted to the county or other local emergency services authority for approval and continuing oversight of implementation.

(2) Each hospital receiving funds under this Chapter may work cooperatively with one or more other hospitals to develop a plan for providing maximum coverage of specialty medical services. Any such plan may include such items as coordinated coverage of particular medical specialty services; alternate coverage of particular medical specialty services; and joint programs for the payment of coverage fees to physician specialists for providing on-call coverage of emergency services. Any such plan shall be submitted to and approved by the county or other local emergency services authority for approval and continuing oversight of implementation.

(3) To the extent that any hospital or hospitals work cooperatively in developing and implementing the plans for providing emergency services described in this section, the people

intend that such hospital or hospitals shall incur no liability under federal or state antitrust or other anti-competition laws prohibiting combinations in restraint of trade, including, without limitation, the provisions of Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

§ 1797.304(a) Funds deposited in the Emergency and Trauma Hospital Services Account, together with all interest and investment income earned thereon, shall be continuously appropriated without regard to fiscal years to and administered by the state Department of Health Services. The department shall allocate the funds solely to eligible hospitals as provided by this Article.

(b) Quarterly, commencing June 30 following the operative date of this Chapter, the department shall allocate to each eligible hospital a percentage of the balance of the Hospital Account equal to such hospital's funding percentage, as determined by the department pursuant to Section 1797.301, except as follows:

(1) The annual aggregate allocation to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan shall not exceed fifty million dollars ($50,000,000.00) during any calendar year, and the department shall reduce the quarterly allocation to each such hospital pro rata, if and to the extent necessary, to contain the aggregate allocation to all such hospitals within any calendar year to a maximum of fifty million dollars ($50,000,000.00). The maximum annual aggregate allocation shall be applied by the department in increments of no more than fifteen million dollars ($15,000,000.00) to each of the first two quarterly distributions of each calendar year, but no specific portion of the limit on maximum annual aggregate distributions provided by this subsection shall apply to other quarterly distributions to such hospitals.

(2) The maximum aggregate annual allocation of fifty million dollars ($50,000,000.00) to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan set forth in paragraph (1) above shall be adjusted upward or downward annually, together with corresponding changes in any quarterly limits, commencing on January 1, 2009, by the same percentage increase or decrease in the aggregate amount deposited in the Hospital Account for the immediate prior calendar year against the aggregate amount deposited in the Hospital Account during the 2007 calendar year. Any adjustment that increases or decreases the maximum aggregate annual allocation to such hospitals shall be applied only to the then current calendar year.

(3) After making the adjustment to the maximum aggregate annual allocation to hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan provided by paragraph (2) above, the department shall further adjust such maximum aggregate annual allocation by increasing or decreasing it by a percentage factor equal to the percentage increase or decrease in the aggregate funding percentage by all hospitals receiving a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan in the 2007 calendar year against the aggregate funding percentage of all hospitals associated with the same health care service plan for the most recent calendar year.

(4) After making the adjustments to the allocation of funds as provided by paragraphs (1) through (3) above, the department shall allocate any funds remaining in the Hospital Account to hospitals that do not receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan pro rata based upon their respective funding percentages.

(c) Prior to each allocation under subdivision (b), the actual costs of the department (including any costs to the department resulting from the charges under Section 11527 of the Government Code) for administering the provisions of this Chapter shall be reimbursed from the Hospital Account. The aggregate funds withdrawn for all administrative costs under this subdivision shall not exceed one half of one percent (0.5%) of the total amounts deposited in the Hospital Account (not including any fines collected under subdivision (h) of Section 1797.301) during the prior quarter.

(d) An eligible hospital shall use the funds received under this section only to further the provision of emergency services by such means as payment for the unreimbursed cost of providing emergency services and improving or expanding emergency services, facilities, or equipment. No funds may be used for the compensation of hospital management executives, except for personnel who work full time in hospital emergency departments. No funds may be used for equipment or capital improvements not directly related to the improvement of hospital emergency department facilities or critical care units.

(e)(1) Except as provided in subparagraph (3) below, a hospital may not utilize funds received under this Chapter to compensate a physician and surgeon for on-call coverage of hospital emergency department services by payment of a coverage fee greater than an amount equal to the difference between the amount the physician actually receives for providing medical services rendered to patients while on-call from all public and private sources, and the amount the physician would receive for such services at his or her reasonable, customary and usual billed charges;

(2) A hospital may not supplement payments physicians receive for services to patients enrolled in the Medicare or Medi-Cal programs.

(3) Notwithstanding subparagraph (1) above, a hospital may provide reasonable compensation to a physician for providing on-call coverage of emergency department services on some other basis that is applied consistently to all physician on-call coverage payments throughout the hospital only if the governing board of the hospital makes the following findings:

(A) The amount and of or rate of payment is reasonable and necessary for the hospital to maintain legally required coverage of medical services to care for patients entering the hospital through the emergency department, or patients who have emergent conditions requiring the services of on-call physicians while in the hospital; and

(B) The method and amount of compensation to any physician or physicians is in compliance with applicable law.

(4) The governing board of a hospital, in its sole discretion, may obtain the opinion of an independent financial analyst with expertise in the hospital industry that the proposed amount or rate of payment to one or more physicians for providing on-call coverage of emergency services is fair and reasonable to the hospital under the circumstances. The hospital may not pay an amount or rate that is higher than any amount or rate determined to be fair and reasonable by the opinion of such independent financial analyst. Any financial analyst providing such an opinion shall be approved by, or on an approved list established and maintained by, the department.

(5) A hospital may compensate a physician for providing on-call emergency services coverage only through a written agreement.

(f) Nothing in this Chapter shall be construed to prevent a hospital from providing reasonable compensation to a physician for providing emergency physician staffing for the emergency department in a manner consistent with the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(g) The hospital governing board, in consultation with the hospital's medical staff, shall ensure the appropriate coverage of medical services to meet the emergency services needs of its patients in a manner consistent with existing law.

§ 1797.305 The following definitions shall apply to terms utilized in this Chapter:

(a) "Bad-debt cost" means the aggregate amount of accounts and notes receivable during a calendar year by an eligible hospital as credit losses, using any method generally accepted for estimating such amounts that on the date this Act became effective, based on patients' unwillingness to pay, and multiplied by the eligible hospital's cost-to-charges ratio.

(b) "County indigent program effort cost" means the amount of care during a calendar year by an eligible hospital, expressed in dollars and based upon the hospital's full established rates, provided to indigent patients for whom a county is responsible, whether the hospital is a county hospital or a non-county hospital providing services to indigent patients under arrangements with a county, multiplied by the eligible hospital's cost-to-charges ratio.

(c) "Charity-care cost" means amounts actually written off, using any method generally accepted for determining such amounts on the date this Act became effective, by an eligible hospital during a calendar year for that portion of care provided to a patient for whom a third-party payer is not responsible and the patient is unable to pay, multiplied by the hospital's cost-to-charges ratio.

(d) "Cost-to-charges ratio" means a ratio determined by dividing an eligible hospital's operating expenses less other operating revenue by gross patient revenue for its most recent reporting period.

(e) "Operating expenses" means the total expenses incurred for providing patient care by the hospital. Operating expenses include (without limitation) salaries and wages, employee

benefits, professional fees, supplies, purchased services, depreciation, leases, interest and other expenses.

(f) "Other operating revenue" means revenue generated by health care operations from non-patient care services to patients and others.

(g) "Gross patient revenue" means the total charges at the hospital's full established rates for the provision of patient care services and includes charges related to hospital-based physician professional services.

(h) "Eligible hospital" or "hospital" means a hospital licensed under subdivision (a) of Section 1250 of the Health and Safety Code that is not owned or operated by the state or federal government and either operates an emergency department or is a children's hospital as defined in Section 10727 of the Welfare and Institutions Code.

(i) "Emergency department encounter" or "emergency department visit" means a face-to-face contact between a patient and the provider who has primary responsibility for assessing and treating the patient in an emergency department and exercises independent judgment in the care of the patient. An emergency department encounter or visit is counted for each patient of the emergency department, regardless of whether the patient is admitted as an inpatient or treated and released as an outpatient. An emergency department encounter or visit shall not be counted where the patient received triage services only.

(j) "Emergency services" or "hospital emergency services" means all services provided to patients in a hospital emergency department and all other patient services related to treatment of an emergent medical condition in any department or unit of a hospital, including, without limitation, any procedures necessary to avoid loss of life, serious disability, or severe pain until the patient has been stabilized and transferred to another health facility or discharged.

(k) "Office" means the Office of Statewide Health Planning and Development.

(l) "Department" means the state Department of Health Services.

(m) "Funding percentage" means the sum of (1) an eligible hospital's percentage of hospital emergency care (as defined in subdivision (s) below) multiplied by a factor of .75, added to (2) such hospital's percentage of effort (as defined in subdivision (p) below) multiplied by a factor of .25, the sum to be expressed as a percentage.

(n) "Hospital Account" or "Emergency and Trauma Hospital Services Account" means the Emergency and Trauma Hospital Services Account of the Tobacco Tax Fund established pursuant to subdivision (i) of Section 30132.2 of the Revenue and Taxation Code.

(o) "Tobacco Tax Fund" means the Emergency Services and Tobacco Tax of 2006 Trust Fund established pursuant to Section 30132 of the Revenue and Taxation Code.

(p) "Percentage of effort" means the sum of an eligible hospital's total amount of charity care cost plus that hospital's total amount of bad-debt cost plus that hospital's county indigent

program effort cost, as a percentage of the sum of the total amount of charity care cost plus the total amount of bad-debt cost plus the total county indigent program effort cost reported in final form to the department by all eligible hospitals for the same calendar year.

(q) "Percentage of hospital emergency care" means an eligible hospital's total emergency department encounters for the most recent calendar year for which such data has been reported to the department in final form, as a percentage of all emergency department encounters reported in final form by all eligible hospitals for the same calendar year. In the case of a children's hospital that does not operate an emergency department and provides emergency treatment to a patient under twenty-one years of age under arrangements with an emergency department of a hospital that is: (1) located within 1,000 yards of the children's hospital; and (2) is either (A) under common ownership or control with the children's hospital, or (B) has contracted with the children's hospital to provide emergency services to its patients under twenty-one years of age, the children's hospital providing emergency services to such patient, shall receive credit for the emergency department encounter, and not the hospital operating the emergency department.

(r) "Unreimbursed cost of providing emergency service" means the difference between the hospital's cost of providing emergency services, determined by multiplying its gross patient charges for providing such services by its cost-to-charges ratio, and the amount it actually receives for providing such services, where the hospital has not agreed to accept the payment it receives as payment in full.

(s) "Physician" means a physician and surgeon licensed under the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

§ 1797.306 A hospital receiving funds under this Chapter shall maintain a written record of its use of all such funds, which shall be available to the department upon request, and available for inspection upon written request by the public. A hospital shall return to the department any funds it receives under this Chapter that it does not use for the purposes specified within one year of receipt or, in the case of a capital project, are not committed within one year of receipt by the governing board for use within no more than two years from the date of such commitment. Any unused funds returned to the department shall be deposited in the Emergency and Trauma Hospital Services Account within the Tobacco Trust Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.304.

§ 1797.307. The department may promulgate and adopt regulations to implement, interpret and make specific the provisions of this Article pursuant to the provisions of the Administrative Procedures Act as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have no authority to promulgate quasi-legislative rules, or to adopt any rule, guideline, criterion, manual, order, standard, policy, procedure or interpretation that is inconsistent with the provisions of this Chapter. This Section shall not be interpreted to allow the department to adopt regulations (as defined by Section 11342.600 of the Government Code) in contravention of Section 11340.5 of the Government Code.

§ 1797.308 No hospital may receive funds under this Chapter unless it complies with the provisions of Article 2 (commencing with Section 1797.309), relating to financial assistance to certain low-income patients.

Article 2. Hospital Charity Care And Financial Assistance Policies

§ 1797.309 For purposes of this Article the following definitions shall apply:

(a) "Charity care" means that portion of care provided by a hospital to a patient for which a third-party payer is not responsible and the patient is unable to pay, and for which the hospital has no expectation of payment.

(b) "Charity care policy" means a policy adopted by the hospital establishing eligibility criteria for charity care services provided by the hospital.

(c) "Discounted payment" means the payment amount after application of a discount from its full charges for services offered by a hospital to patients who have no or inadequate insurance and qualify under the hospital's discount payment policy.

(d) "Discount payment policy" means a policy adopted by the hospital establishing eligibility criteria for receiving services for a discounted payment.

(e) "Federal poverty level" means the most recent poverty guidelines periodically adopted by the federal Department of Health and Human Services for determining financial eligibility for participation in various programs based upon family size as applicable to California.

(f) "Hospital" means a health facility licensed under subdivision (a) of Section 1250 that is not owned or operated by the state or federal government.

§ 1797.309.5 Each hospital receiving an allocation of funds under Article 1 (commencing with Section 1797.300) of this Chapter shall comply with the provisions of this Article throughout each calendar year in which it receives any such allocation.

§ 1797.310(a) Each hospital shall maintain an understandable, written charity care policy and discount payment policy for low-income patients with no or inadequate insurance.

(b) Each hospital's discount payment policy shall clearly state eligibility criteria based upon the patient's, or the family of the patient, as the case may be, income and assets, and the process used by the hospital to determine whether a patient is eligible for financial assistance from the hospital. Such eligibility criteria and process shall take into account the patient's relationship to the federal poverty level.

(c) Patients who are at or below three hundred percent (300%) of the federal poverty level shall be eligible to apply for participation under each hospital's charity care policy or discount payment policy. However, rural hospitals, as defined by Section 124840, may establish eligibility levels for financial assistance and charity care at less than three hundred percent

(300%) of the federal poverty level as appropriate to maintain their financial and operational integrity.

(d) Absent any regulatory prohibition, each hospital shall limit expected payment for services it provides to any patient at or below three hundred percent (300%) of the federal poverty level eligible under its discount payment policy to the greater of the amount of payment the hospital would receive for providing such services from Medicare or any other government-sponsored health program of health benefits of which the hospital participates. If the hospital provides a service for which there is no established payment by Medicare or any other government-sponsored program of health benefits of which the hospital participates, the hospital shall establish an appropriate discounted payment.

(e) A hospital shall use its best efforts to ensure all financial assistance policies are applied consistently.

(f) In determining a patient's eligibility for financial assistance, a hospital shall assist the patient in determining if he or she is eligible for government-sponsored programs.

§ 1797.311(a) Each hospital shall post notices regarding the availability of its discount payment policy and charity care policy. These notices shall be posted in visible locations throughout the hospital, such as patient admissions and registration, the billing office, the emergency department and other outpatient settings.

(b) Every posted notice regarding financial assistance policies shall contain brief instructions on how to apply for charity care or a discounted payment. Each notice shall include a contact telephone number that a patient or family member can call to obtain more information.

(c) A hospital shall train appropriate staff members about the hospital's discount payment policy. Training shall be provided to all staff members who directly interact with patients regarding their hospital bills.

(d) When communicating with patients regarding its discount payment policy, a hospital shall attempt to do so in the primary language of the patient, or his or her family, if reasonably possible, and in a manner consistent with applicable federal and state law.

(e) Each hospital shall make its charity care and discount payment policies available to appropriate community health and human services agencies and other organizations that assist low-income patients.

§ 1797.312(a) Each hospital shall have a written policy about when and under whose authority patient debt is advanced for collection, and shall use its best efforts to ensure that patient accounts are processed fairly and consistently.

(b) Each hospital shall establish a written policy defining standards and practices for the collection of debt, and shall obtain a written agreement from any agency that collects hospital receivables that it will adhere to the hospital's standards and scope of practices.

(c) At time of billing, each hospital shall provide to all low-income and uninsured patients (as the same are defined in policies adopted by the hospital regarding eligibility for charity care and discounted payment) the same information concerning services and charges provided to all other patients who receive care at the hospital.

(d) When sending a bill to a patient, each hospital shall include: (1) a statement that indicates that if the patient meets certain low-income requirements the patient may be eligible for a government-sponsored program or for financial assistance from the hospital; and (2) a statement that provides the patient with the name and telephone number of a hospital employee or office from whom or which the patient may obtain information about the hospital's financial assistance policies for patients and how to apply for such assistance.

(e) Any patient seeking financial assistance from the hospital (or the patient's legal representative) shall provide the hospital with information concerning health benefits coverage, financial status and any other information that is necessary for the hospital to make a determination regarding the patient's status relative to the hospital's charity care policy, discount payment policy, or eligibility for government-sponsored programs.

(f) For patients who have an application pending for either government-sponsored coverage or for eligibility under the hospital's own charity care or discount payment policies, a hospital shall not knowingly send that patient's bill to a collection agency prior to 120 days from time of initial billing.

(g) If a patient qualifies for eligibility under the hospital's charity care or discount payment policy and is reasonably cooperating with the hospital in an effort to settle an outstanding bill, the hospital shall not send the unpaid bill to any outside collection agency if the hospital knows that doing so may negatively impact a patient's credit.

(h) The hospital or outside collection agency operating on behalf of the hospital shall not, in dealing with patients eligible under the hospital's charity care or discount payment policies, use wage garnishments or liens on primary residences as a means of collecting unpaid hospital bills. This requirement does not preclude hospitals from pursuing reimbursement from third-party liability settlements or tortfeasors or other legally responsible parties.

(i) Eligibility for charity care and discounted payments may be determined at any time the hospital is in receipt of all the information needed to determine the patient's eligibility under its applicable policies.

(j) Any extended payment plans offered by a hospital to assist patients eligible under the hospital's charity care or discount payment policy, or any other policy adopted by the hospital for assisting low-income patients with no or inadequate insurance in settling past due outstanding hospital bills, shall be interest free.

§ 1797.313(a) Notwithstanding any other provision of law, the amounts paid by parties for services resulting from reduced or waived charges under a hospital's discount payment or charity care policy shall not constitute the hospital's uniform, published, prevailing, or customary charges, its usual fees to the general public, or its charges to non-Medi-Cal purchasers

under comparable circumstances, for purposes of any payment limit under the federal Medicare program, the Medi-Cal program or any other federal or state-financed health care program.

(b) Nothing in this Article shall be construed to prohibit a hospital from uniformly imposing charges from its established charge schedule or published rates, nor shall this Article preclude the recognition of a hospital's established charge schedule or published rates for purposes of applying any payment limit, interim payment amount, or other payment calculation based upon a hospital's rates or charges under the Medi-Cal, Medicare, worker's compensation, or other federal, state or local public program of health benefits.

(c) To the extent that any requirement of this Article results in a federal determination that a hospital's established charge schedule or published rates are not the hospital's customary or prevailing charges for services, the requirement in question shall be inoperative. The department shall seek federal guidance regarding modification to the requirement in question. All other requirements in this Article shall remain operative.

SECTION 7. Preservation of Existing Funding

Section 16950.2 of Article 3 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code is added to read:

§16950.2(a) An amount, equal to the amount appropriated and allocated pursuant to Section 39.1 of Chapter 80 of the Statutes of 2005 (twenty-four million eight hundred three thousand dollars ($24,803,000), shall be transferred and allocated pursuant to subdivision (b) from accounts within the Cigarette and Tobacco Products Surtax Fund (commencing with Section 30122 of the Revenue and Taxation Code) as follows:

(1) Twenty million two hundred twenty-seven thousand dollars ($20,227,000) from the Hospital Services Account.

(2) Four million five hundred seventy-six thousand dollars ($4,576,000) from the Physician Services Account.

(b) The funds specified in subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars ($22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two million four hundred seventy-nine thousand dollars ($2,479,000) shall be administered and allocated through the Rural Health Services Program, Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(c) This transfer shall be made on June 30 of the first fiscal year following adoption of this Act, and on June 30 of each fiscal year thereafter. Funds transferred are continuously appropriated without regard to fiscal years for the purposes so stated for each such account.

(d) (1) Funds allocated pursuant to this section from the Physician Services Account and the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for reimbursement of physicians for losses incurred in providing uncompensated emergency services in general acute-care hospitals providing basic, comprehensive, or standby emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the Physician Services Account in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code, and shall be paid only to physicians who directly provide emergency medical services to patients, based on claims submitted or a subsequent reconciliation of claims. Payments shall be made as provided in Sections 16951 to 16959, inclusive, of the Welfare and Institutions Code, and payments shall be made on an equitable basis, without preference to any particular physician or group of physicians.

(2) If a county has an EMS Fund Advisory Committee that includes both emergency physicians and emergency department on-call back-up panel physicians, and if the committee unanimously approves, the administrator of the EMS Fund may create a special fee schedule and claims submission criteria for reimbursement for services rendered to uninsured trauma patients, provided that no more than fifteen percent (15%) of the tobacco tax revenues allocated to the County's EMS Fund is distributed through this special fee schedule, that all physicians who render trauma services are entitled to submit claims for reimbursement under this special fee schedule, and that no physician's claim may be reimbursed at greater than fifty percent (50%) of losses under this special fee schedule.

SECTION 8. New Funds Not to Supplant Existing Funds

Funds allocated and appropriated pursuant to this Act shall be used to supplement existing levels of federal, state and local funding, and not to supplant existing levels of funding. No state or local government agency shall consider the revenue supporting emergency services to hospitals provided by this Act in its determination of the amount or rate of payment to hospitals on behalf of patients who are government-sponsored or the responsibility of a governmental agency or body.

SECTION 9. Amendment

Except as hereafter provided, this Act may only be amended by the Legislature to further its purposes by a statute passed in each house by roll-call vote entered in the journal, four-fifths of the membership concurring. Commencing ten years following the effective date of the Act, the Legislature may, by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, adjust the allocation of funds provided by Section 3 of this Act. No amendment adjusting the allocation of funds in Section 3 of this Act; however, shall reduce the total amount allocated for emergency hospital services as provided by subdivision (i) of Section 30132.2 of Article 4 of Chapter 2 of Part 13 of Division 2 of the

Revenue and Taxation Code below sixty-five percent (65%) of the funds deposited in the Emergency Services and Tobacco Tax of 2006 Trust Fund. Such an amendment to the allocation formula must improve the health of, or the provision of health care services to, Californians.

SECTION 10. Operative Date

This Act shall become effective immediately upon its adoption by the people. The imposition of the tax on cigarettes shall then become operative as provided in Section 3 of this Act. The allocation and expenditure of funds shall become operative on January 1 in the year following the adoption of this Act.

SECTION 11. Severability

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SECTION 12. Conflicting Measures

(a) This measure is intended to be comprehensive. It is the intent of the People that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SECTION 13. Conformity with State Constitution

Section 14 is added to Article XIIIB of the Constitution to read:

SEC. 14(a) "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Emergency Services and Tobacco Tax Act of 2006. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Emergency Services and Tobacco Tax of 2006 Trust Fund.

(b) The tax created by the Emergency Services and Tobacco Tax Act of 2006 and the revenue derived therefrom shall not be considered General Fund revenues for the purposes of Section 8 and 8.5 of Article XVI.

(c) Distribution of moneys in the Emergency Services and Tobacco Tax of 2006 Trust Fund or any of the accounts created therein, shall be made pursuant to the Emergency Services and Tobacco Tax Act of 2006 notwithstanding any other provision of this Constitution.